Remarks

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing Amendment to the Claims, claims 1-24 are pending in the application, of which claims 1, 8, and 15 are independent. By the foregoing Amendment, claims 1-21 are sought to be amended. Claims 22-24 are sought to be added. No new matter is embraced by this amendment and its entry is respectfully requested. Based on the above Amendment and the remarks set forth below, it is respectfully requested that the Examiner reconsider and withdraw all outstanding rejections.

Rejection under 35 U.S.C. § 102

The Examiner, on page 3 of the Office Action, states that claims 1-21 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Pub. No. 2002/0169990 A1 to Sherburne, JR (hereinafter "Sherburne"). Applicants respectfully traverse this rejection. Based on the remarks set forth below, Applicants respectfully request that this rejection be reconsidered and withdrawn.

To anticipate a claim of a pending application, a single reference must disclose each and every element of the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1397 (Fed. Cir. 1986). The exclusion of a claimed element from the single source is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

With respect to independent claims 1, 8, and 15, the Examiner states that Sherburne teaches every element of these claims. Applicants respectfully disagree.

Contrary to the present invention, Sherburne does not teach or suggest every element of Applicant's invention. For example, referring to independent claim 1, Sherburne does not teach or suggest at least the following claimed element:

> sending the compared data buffer level to an operating system for the digital circuitry, wherein the operating system causes the digital circuitry to switch from a first state to a second state when the compared data buffer level is greater than the second memory buffer level, and wherein the operating system causes the digital circuitry to switch from a second state to a first state when the compared data buffer level is less than the first memory buffer level.

Unlike the present invention, Sherburne does not appear to teach or suggest sending the compared data buffer level to an operating system for the digital circuitry, wherein the operating system causes the digital circuitry to switch from a first state to a second state when the compared data buffer level is greater than the second memory buffer level, and wherein the operating system causes the digital circuitry to switch from a second state to a first state when the compared data buffer level is less than the first memory buffer level. Instead, Sherburne discloses a buffer as a FIFO (first-in, first-out memory circuit). *Sherburne*, page 3, paragraph [0026]. The FIFO sends a FIFO level to control logic. The control logic, based on the FIFO level, adjusts a clock frequency to the processor clock. *Sherburne*, page 3, paragraph [0028]. Thus, unlike the present invention, Sherburne does not teach sending the compared data buffer level to an operating system ..., wherein the operating system causes the digital circuitry to switch from a first state to a second state ..., and wherein the operating system causes the digital circuitry to switch from a second state to a first state .... Instead Sherburne sends the FIFO level to control logic.

For at least these reasons, Sherburne does not include each and every element of Applicants' claimed invention recited in independent claim 1, and the claims that depend therefrom (claims 2-7 and 24). Applicant respectfully submits that claims 1-8 and 24 are not anticipated by Sherburne.

Independent claim 8 recites elements similar to the elements of claim 1. Thus, for at least the reasons stated above, claim 8 and the claims that depend therefrom (claims 9-14 and 23), are not anticipated by Sherburne as well.

With respect to independent claim 15, Sherburne does not teach or suggest at least the following claimed elements: "a memory buffer monitoring unit to compare a memory buffer level to a first and a second memory buffer level for at least one memory buffer providing data to an operating system for digital circuitry, the second memory buffer level being set greater than the first memory buffer level, and a switching unit controlled by the operating system to adjust digital circuitry state, ..." As indicated above, Sherburne does not teach or suggest that the at least one memory buffer provides data to an operating system and that the switching unit is controlled by the operating system to adjust digital circuitry state, ...

For at least these reasons, Sherburne does not include each and every element of Applicants' claimed invention recited in independent claim 15, and the claims that depend therefrom (claims 16-22). Applicant respectfully submits that claims 15-22 are not anticipated by Sherburne.

Therefore, independent claims 1, 8, and 15, and the claims that depend therefrom, are patentable over Sherburne. Reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all currently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below

By: Serita Evans

Date: July 19, 2004